

Exhibit 10 to Plaintiff's Response To Defendant's Motion for Summary Judgment

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF ALABAMA
3 NORTHERN DIVISION

4 CASE NUMBER: 2:05-CV-194-T

5 HAZEL M. ROBY, as Administratrix
6 of the Estate of Ronald Tyrone
7 Roby, Deceased,

8 Plaintiff,

9 vs.

10 BENTON EXPRESS, INC., et al.,

11 Defendants.

12

13 S T I P U L A T I O N

14 IT IS STIPULATED AND AGREED by and
15 between the parties through their respective
16 counsel, that the videotaped deposition of
17 Boyd Don Hammond may be taken before Angela
18 Smith, RPR, CRR, at the offices of Carr,
19 Allison, at 100 Vestavia Parkway, Ste: 200,
20 Birmingham, Alabama 35216, on the 19th day
21 of September, 2005.

22 DEPOSITION OF BOYD DON HAMMOND

23

42643

 COPY

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1 A. Yes.

2 Q. Okay. Is it important to
3 Benton Express, as a less-than-truckload
4 carrier, to have its loads delivered on
5 time?

6 A. Yes.

7 Q. And is that one of Benton
8 Express's mottos or selling points to say
9 that: We deliver our loads on a timely
10 basis?

11 A. Yes.

12 Q. And does Benton Express also
13 advertise that it has a sophisticated
14 technology to allow it to track its loads?

15 A. I believe they do.

16 Q. You believe they have that
17 sophisticated technology or you believe they
18 advertise that?

19 A. I'm not sure. That doesn't
20 come under what I'm responsible for.

21 Q. Okay.

22 A. Being safety and human
23 resource, the technology end and the radio

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1 instruct our drivers on how they're to
2 conduct themselves from point A to point B.
3 To follow the no-stop policy. But it's at
4 their discretion on the no-stop.

5 Q. No-stop policy meaning that if
6 somebody tries to pull up beside them and
7 get them to stop and attempt to steal the
8 cargo, don't stop?

9 A. Don't stop.

10 Q. And I think you said:
11 However, though, in their discretion, if
12 they think their safety is on the line,
13 maybe their life, maybe somebody's got a gun
14 at the window, then they have that
15 discretion?

16 A. Exactly. It's a judgment call
17 on their part.

18 Q. Do you all have any tracking
19 devices that will allow you all to track
20 your trailers or tractors in case of theft?

21 A. No.

22 Q. Do you know of any more
23 efficient way of tracking cargo trailers or

1 Q. Did Garlin ask Craig any
2 questions, as best you all understand, about
3 what had caused -- where he was on Sunday?

4 A. No.

5 Q. Do you know why Garlin was at
6 the terminal, just to take the Tallahassee
7 run?

8 A. Go to Tallahassee.

9 Q. So, he just so happened to
10 answer the phone?

11 A. Yes.

12 Q. So, he wasn't -- It wasn't
13 generally his responsibility, he just so
14 happened, because he was going to work that
15 day, just so happened to be at the terminal?

16 A. Yes.

17 Q. And Mr. Craig Stephens, he
18 just called the terminal and just so
19 happened Garlin answered?

20 A. To my knowledge.

21 Q. And it was your understanding
22 that he called the terminal; right?

23 A. Yes.

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1 Q. Where was Mr. Glen Clark at
2 the time Craig called the terminal?

3 A. I don't know where Mr. Clark
4 was at.

5 Q. Is Mr. Clark generally at the
6 terminal on Sunday?

7 A. No.

8 Q. Who all is generally at the
9 terminal on Sunday?

10 A. No one, other than the drivers
11 that have received dispatches and they're
12 going to be leaving, they would go there and
13 get their unit and leave.

14 Q. No dispatcher or anything?

15 A. It's all done prior to Sunday.

16 Q. Okay. I take it, then, that
17 based on what you told me is the proper
18 protocol for making contact with a
19 dispatcher with your Nextel phone, that
20 Craig Stephens, if he needed to relay
21 something to the terminal, he did the proper
22 thing by calling the terminal on Sunday?

23 A. Yes.

1 reasonable amount of time, in compliance
2 with the Department of Transportation's
3 regulations.

4 Q. And that's a good key point
5 you just add. In compliance with the
6 Federal Motor Vehicle -- Well, in compliance
7 with the federal government regulations; is
8 that right?

9 A. That's correct.

10 Q. And the federal government
11 regulations require a driver to pull over
12 and stop if he's tired and sleepy and
13 fatigued?

14 MR. BROCKWELL: Object to the
15 form.

16 A. Require him to stop?

17 Q. If he was fatigued and sleepy,
18 would the regulations require that he pull
19 over and stop and get adequate rest?

20 A. He is required to get ten
21 hours of rest after being on duty no more
22 than fourteen hours, and driving no more
23 than eleven prior, and then taking a

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1 ten-hour break.

2 Q. If a Benton Express driver was
3 tired and sleepy, what should he do?

4 A. If he's tired and sleepy?

5 Q. Yes. And he's delivering a
6 load and he's tired and sleepy.

7 A. Drivers are instructed to get
8 proper rest of at least ten hours prior to
9 being dispatched.

10 Q. So, if he gets tired and
11 sleepy on the job, what should he do?

12 A. I would definitely want him to
13 take a break, to drink a cup of coffee, to
14 take fifteen minutes, take thirty minutes,
15 but --

16 Q. Would it be fair to say, take
17 whatever time was adequate to make sure he's
18 not tired and sleepy when he starts back
19 driving?

20 A. I wouldn't phrase it that way,
21 no.

22 Q. Okay.

23 A. Because the driver is supposed

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1 A. Yes.

2 Q. And isn't it your
3 understanding that at the time of the wreck,
4 he was in Montgomery?

5 A. Yes.

6 Q. He was in the Benton Express
7 truck, as I said earlier?

8 A. Yes.

9 Q. With Benton Express goods?

10 A. Yes.

11 Q. And he was on the 85/65 South
12 Interchange?

13 A. Yes.

14 Q. And based on his normal route,
15 it appears, from everything we know, is that
16 he was on the same route he normally travels
17 back to Pensacola?

18 A. Normal route, but not in time.

19 MR. BOONE: Object as
20 nonresponsive.

21 Q. And all I'm asking you is,
22 based on everything you've seen in your
23 investigation, he was in the Benton Express

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1 truck carrying Benton Express goods on his
2 way -- on his normal route back to
3 Pensacola?

4 A. He was on the route back to
5 Pensacola.

6 Q. That's all I was asking you at
7 this point. Is that correct?

8 A. Yes.

9 Q. Okay. Do you know of anybody
10 at Benton Express that -- Does he have a
11 voice mailbox, like, if you call his phone,
12 will a message be stored?

13 A. I don't know.

14 Q. You don't know. Do you have a
15 Nextel phone issued by Benton Express?

16 A. Yes.

17 Q. Does yours have a voice
18 mailbox, if I call you and you don't answer,
19 would it leave a message?

20 A. Yes.

21 Q. Do you know if anybody called
22 him and left a message?

23 A. No.

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1 is that right?

2 A. That's correct.

3 Q. And at that time, on Saturday,
4 which was sometime on Saturday evening?

5 A. Yes.

6 Q. And at that time, he had no
7 thought that this truck was stolen, did he?

8 A. No.

9 Q. He was simply looking for an
10 employee?

11 A. An overdue employee.

12 Q. That's right. He was looking
13 for an overdue employee. Would you agree
14 with that?

15 A. Yes.

16 Q. He had no reason to believe
17 the truck was stolen?

18 A. No.

19 Q. And, in fact, he told the
20 police that Mr. Craig Stephens was a good
21 employee?

22 A. Yes.

23 Q. Reliable employee?

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1 A. Yes.

2 Q. A family man?

3 A. Well, I'm not sure of all the
4 terminology that he used as far as family
5 man or whatever.

6 Q. But in his story he told him
7 it was an exemplary Benton Express employee?

8 A. That he was a good employee,
9 yes.

10 Q. And all he was trying to do
11 was locate him?

12 A. We're trying to find out where
13 he was at, yes.

14 Q. And you all, at that point,
15 understood and considered him an employee
16 who just was overdue and you were trying to
17 determine what the delay was?

18 MR. BROCKWELL: Object to the
19 form.

20 A. We were trying to find out the
21 location of Mr. Stephens because of being
22 overdue.

23 Q. Right.

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1 A. And that's the reason the BOLO
2 was put out for three states through the
3 Florida State Highway Patrol.

4 Q. Right. And I think that's
5 what I said. Let me rephrase it. At that
6 time, on Saturday, when Mr. Glen Clark, his
7 dispatcher, who last saw him in Pensacola,
8 called the police, he was simply calling the
9 police about a good, reliable Benton Express
10 employee who had been delayed and he was
11 trying to locate him?

12 MR. BROCKWELL: Object to the
13 form.

14 A. Who was well overdue and was
15 missing.

16 Q. Right. And he had considered
17 -- And that's why he called the police?

18 A. Yes.

19 Q. Because he was looking for his
20 employee?

21 A. Yes.

22 Q. Was Benton Express -- I think
23 you told me, and we established that Benton

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1 Express -- Mr. Stephens was working for
2 Benton Express, delivering a load for Benton
3 Express to Atlanta?

4 A. He was carrying the Pensacola
5 freight to Atlanta.

6 Q. That was providing a benefit
7 to Benton Express. You all were paying
8 Mr. Stephens for his work; right?

9 A. Correct.

10 Q. And Mr. Stephens was
11 performing work as a benefit to Benton
12 Express?

13 A. Yes.

14 Q. Because you all get paid?

15 A. Pardon?

16 Q. Because Benton Express gets
17 paid?

18 A. Yes.

19 Q. And he delivered that load in
20 Atlanta?

21 A. Yes.

22 Q. And Mr. Stephens had to drop a
23 load back off to Pensacola? He had to bring

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1 a load from Atlanta back to Pensacola?

2 A. Yes.

3 Q. And at the time of this wreck
4 he had -- he was in that Benton Express
5 truck and he had those goods on that truck
6 in Montgomery?

7 A. Yes.

8 Q. And those goods, once received
9 -- or if received by Benton Express, are
10 goods that you all are going to distribute
11 to customers?

12 A. If received, yes.

13 Q. And you all get a benefit from
14 loads being brought back to Pensacola,
15 because you all distribute them to your
16 customers; is that correct?

17 A. That's how we stay in
18 business.

19 Q. And you all make money by that
20 business?

21 A. Yes.

22 Q. Do you know when Mr. Glen
23 Clark first found out Garlin's message?

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1 A. No.

2 Q. And another kind of -- And you
3 may have been referring to this, but another
4 kind of tracking system, that we didn't give
5 a name, is called Qualcomm. Have you ever
6 heard of that?

7 A. No.

8 Q. You've never heard of
9 Qualcomm?

10 A. No.

11 Q. Do you know of any trucking
12 companies in the trucking industry who use
13 Qualcomm?

14 A. I have no idea.

15 Q. Do you know of any trucking
16 companies -- Other haulers like Benton
17 Express, you follow what I'm asking about,
18 other people other than Benton Express who
19 haul like you all do?

20 A. Uh-huh.

21 Q. Do you know if anybody else
22 uses any kind tracking systems?

23 A. Specific companies, I wouldn't

1 know.

2 Q. So, right now, as you sit
3 here, you don't know what any of the other
4 eighteen-wheeling hauling companies use?

5 A. As far as that system that you
6 just mentioned, what was the name of it
7 again?

8 Q. Yeah. The tracking system.
9 Well, let's just talk about GPS Tracking and
10 forget the name.

11 A. Oh, okay.

12 Q. Do you know of any other
13 companies that use GPS Tracking Systems?

14 A. Not specifically, no.

15 Q. None of them? You don't have
16 a clue?

17 A. I know they operate off a
18 satellite.

19 Q. No, no. I'm saying, do you
20 know of any eighteen-wheel trucking
21 companies use those satellite tracking
22 systems?

23 A. No.

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1 A. It was in the neighborhood of
2 one o'clock, and returned somewhere around
3 nine o'clock that night.

4 Q. Okay. One o'clock in the
5 evening?

6 A. One o'clock in the evening.

7 Q. Returned at nine o'clock that
8 night?

9 A. That's approximate time. I'm
10 not exactly sure on the one o'clock.

11 Q. Did you find out where he
12 went?

13 A. He went out to 85, and
14 retracing the way that he would have gone on
15 a normal route back to Pensacola.

16 Q. Do you know how far he went?

17 A. No, I do not.

18 Q. Do you know if he made it to
19 Montgomery?

20 A. No.

21 Q. Never asked?

22 A. No.

23 Q. Did you ask him where he

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1 That's not consistent with trying to steal a
2 truck, is it?

3 MR. BROCKWELL: Object to the
4 form.

5 Q. Would you agree with that?

6 A. It's not consistent with
7 trying to steal a truck?

8 Q. Because if I was trying to
9 steal your truck, I wouldn't call you and
10 tell you -- and call you and try to talk to
11 you, would I? That's not normal, though, is
12 it? You would agree with that, that
13 somebody trying to steal your truck, it
14 wouldn't be consistent with me to call you
15 at the terminal?

16 MR. BROCKWELL: Object to the
17 form.

18 A. That's correct.

19 Q. And what's consistent with
20 calling an employee of Benton Express or
21 calling the terminal, is to let them know
22 what may have caused the delay or where they
23 were?

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1 an ultimate written document of conclusions
2 you got?

3 A. No.

4 Q. So, when you were saying this
5 stack of documents, you weren't talking
6 about a big stack of documents you have?

7 A. Well, part of it would be
8 interrogatories, discovery, those kind of
9 papers that you generated.

10 MR. BOONE: Let's take a quick
11 break and hopefully we'll be close to
12 finishing.

13 VIDEOGRAPHER: This ends
14 videotape number two of the deposition of
15 Don Hammond. The time is now 1:13 p.m.

16 (Recess taken.)

17 VIDEOGRAPHER: This marks the
18 beginning of videotape number three of the
19 deposition of Don Hammond. The time is now
20 1:22 p.m.

21 Q. I'll show you a document with
22 Bates number 083 through 099. Could you
23 look at that document and tell me what it

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1 is.

2 A. It's the Driver's Cargo and
3 Security Policy as mandated by the
4 Department of Transportation.

5 Q. Is that something that applied
6 to -- that applied to Mr. Stephens?

7 A. Yes.

8 Q. Or is that something that
9 applied to just over-the-road haulers or
10 city drivers, too?

11 A. Both.

12 Q. Both?

13 A. Yes.

14 Q. Okay. Let me look at it for a
15 second. On page 08 -- with Bates number
16 086, I will direct your attention to the
17 next-to-the-last dot, right here
18 (indicating). Why don't you read that for
19 me.

20 A. Drivers are expected to
21 maintain regular communication with the
22 company while in transit. Any incident of
23 drivers failing to check in when required

1 shall be assumed to be suspicious and highly
2 irregular. Immediate action shall be taken
3 in such situations.

4 Q. And what's that word, drivers
5 should be in what kind of communication
6 again?

7 A. Regular communication.

8 Q. Do you know what regular
9 communication is for Mr. Stephens that you
10 say this applies to?

11 A. It says that he should be in
12 regular communication with the company while
13 in transit.

14 Q. Right. Do you know what
15 regular communication means, as it applies
16 to Mr. Stephens, which you told me this
17 document applied to?

18 A. Regular would mean if you have
19 a breakdown, you're to call in. If you're
20 involved in an accident, you're to call in
21 to the eight-hundred number.

22 Q. So, regular in your words
23 means don't call in if nothing is wrong?

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1 A. Exactly.

2 Q. So, regular communication
3 means, in your opinion, don't call in unless
4 something is going wrong?

5 MR. BROCKWELL: Asked and
6 answered.

7 A. That's correct.

8 Q. Okay. Let me look at it
9 again. And this is part of a document that
10 Benton provides to its employees?

11 A. Yes.

12 Q. And its employees are supposed
13 to follow those directions?

14 A. Yes.

15 Q. And those employees include
16 yourself?

17 A. Yes.

18 Q. Mr. Glen Clark?

19 A. Yes.

20 Q. Bill Jones?

21 A. Yes.

22 Q. Craig Stephens?

23 A. Yes.

1 Q. And you don't see anywhere in
2 that statement that says: Maintain --
3 drivers are expected to maintain regular
4 communications with the company while in
5 transit? That's what it says.

6 You didn't see anywhere in
7 there where it says: Drivers are expected
8 to maintain regular communication if an
9 emergency arise, did you? Or if there's a
10 mechanical failure, you didn't see anything
11 like that in that statement, did you?

12 A. Not in that particular
13 statement, but it is within the context of
14 that policy.

15 Q. Okay. Is there anything in
16 this policy that says only -- to maintain
17 regular communication with the company while
18 in transit, anything in here further says:
19 Well, what we really mean is only when
20 something happens such as a maintenance
21 breakdown or emergency or something?

22 A. Regular communication is not
23 time specific. You are dispatched on a run,